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STAFF REPORT: APPEAL

Local Government..... **City of Morro Bay**

Local Decision..... Approved with conditions, 9/27/99

Appeal Number..... **A-3-MRB-99-082**

Applicant **Tri W Enterprises, Inc.**

Appellant Jack McCurdy

Project Location..... Terminus of Morro Bay Boulevard at Hwy. 1, Morro Bay (San Luis Obispo County) (APN 064-401-004)

Project Description..... One (1) year time extension for PM 04-92/CDP43-92 allowing a minor land division of an approximately 175 acre parcel to create one 17.54 acre parcel and one remainder parcel of approximately 157 acres. Original tentative map approved June 14, 1993.

Substantive File Documents..... Local Permits PM 04-92/CDP43-92; City of Morro Bay certified Local Coastal Program.

Staff Recommendation..... **No Substantial Issue**

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, find that **no substantial issue** exists with respect to the grounds on which the appeal is based. The action taken by the City of Morro Bay was to extend a one-year time extension for an approved vesting tentative map and concurrently to accept the withdrawal of a time extension request for an approved conditional use permit for a shopping center on the site of the map. The vesting tentative map divides an approximately 175 acre parcel into one 17.54 acre parcel and one remainder parcel of approximately 157 acres.

The appellant contends that by accepting the withdrawal of the time request for the conditional use permit associate with this site (thereby allowing the use permit to expire) the City could not then approve a time extension for the tentative map. The appellant refers to Measure H (incorporated into the LCP via Policy 6.09) because it requires that the siting of a use on the site “be in accordance with a precise development plan consistent with the General Plan Land Use Element and relevant Coastal Act Chapter 3 policies.” According to the appellant, this means that the City cannot approve (or

**California Coastal Commission**

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extend an approval of) a land division unless there is also an approved development (via a Precise Plan) for the new parcels. Although there is some question as to the precise meaning of Policy 6.09, the LCP nonetheless does not clearly require that a Precise Plan be included as a part of a Tentative Parcel Map submittal.

The appellant also raises concerns regarding the general consistency of the Parcel Map with the certified LCP, and measures to protect the property from future development. Although there are significant changed circumstances that should be evaluated in any future project proposal reviews for the site, including visual resource protection and traffic concerns, these changes do not raise a substantial issue with respect to the land division, which essentially reflects the land use designations and zoning of the certified LCP. Further, while the original subdivision approval technically may not have been fully consistent with LCP requirements to protect the remainder parcel, particularly concerning LCP requirements for permanent agricultural land protection, adequate measures have been put into place or already exist to protect this agriculturally zoned land, including a prohibition against future land division.

STAFF REPORT CONTENTS

SUMMARY OF STAFF RECOMMENDATION.....	1
I. SUMMARY OF APPELLANT’S CONTENTIONS	3
II. LOCAL GOVERNMENT ACTION.....	3
III. APPEAL PROCEDURES	3
IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE.....	4
V. RECOMMENDED FINDINGS AND DECLARATIONS	5
A. Location and Background	5
B. Measure H	7
C. Appellant’s Contentions (Part I)	9
D. Appellant’s Contention (Part 2).....	11
E. Agriculture	12
F. Extension of Coastal Commission Coastal Development Permit A-4-89-134.....	13
VI. California Environmental Quality Act (CEQA)	14
VII. EXHIBITS	
1. Appellant’s Contentions	
2. Location Maps	
3. Vesting Tentative Map and Existing Zoning Map	
4. LCPA 1-93 Map	
5. Measure H	
6. Site Photos	
7. City’s Conditions of Approval	
8. Proposed Open Space Easements	
9. City Ordinance No. 266	
10. Correspondence	



I. SUMMARY OF APPELLANT'S CONTENTIONS

(Please see Exhibit 1 for the full text of the appeal.)

In summary, the appellant contends that the project does not comply with the City of Morro Bay certified LCP in the following two ways:

1. Measure H, incorporated into the LCP via Policy 6.09, designates 13 acres on the property for "district commercial" uses and states that "(t)he citing (sic) of such use shall be in accordance with a precise development plan consistent with the General Plan Land Use Element and relevant Coastal Act Chapter 3 policies." The City's action extending the tentative parcel map for subdivision of the property, while concurrently accepting a withdrawal of the use permit for the approved shopping center, violates the LCP because that action approved the parcel map for development of the property for commercial purposes (i.e. siting of such use) in the absence of a required Precise Plan (i.e. in accordance with a precise development plan).
2. The conditions of approval for the Parcel Map and the Precise Plan for the shopping center allow extensions of the Parcel Map upon finding that the project complies with all applicable provision of the City's Municipal Code. However, the City allowed the precise plan to be withdrawn so there is no project with compliance can be determined.

II. LOCAL GOVERNMENT ACTION

The Morro Bay City Planning Commission approved an extension of vesting tentative parcel map PM-04-92/CDP 43-92R on August 16, 1999. Concurrently, the applicant requested and the Planning Commission accepted withdrawal of a time extension request for CUP 03-88, a conditional use permit for a 120,000 square foot shopping center. The Planning Commission's action was appealed to the City Council, which denied the appeal and upheld the Planning Commission's action on September 21, 1999.

III. APPEAL PROCEDURES

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is located within 100 feet of a stream.



The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not located between the first public road and the sea.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed, pursuant to Coastal Act Section 30603.

MOTION: *I move that the Commission determine that Appeal No. A-3-MRB-99-082 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application *de novo* and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE

The Commission finds that Appeal No. A-3-MRB-99-082 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.



V. RECOMMENDED FINDINGS AND DECLARATIONS

A. Location and Background

The property, authorized for subdivision by Coastal Development Permit 43-92, is a 175-acre parcel located at the southeastern end of Morro Bay Boulevard, just inland of Highway One, adjacent to land in unincorporated San Luis Obispo County (see Exhibit 2). The property lies on a generally west facing slope and the portion of the property involved in this project lies on either side of the upper reaches of Willow Camp Creek, between two hills. Although currently vacant, the property has in the past been used primarily for cattle grazing. A small, abandoned redrock quarry is also on the property, but not in the area of the proposed development. The entire 175 acres are located within the coastal zone and were initially zoned as Agriculture with certification of the LCP in 1982. Following is a brief history of the Commission's involvement with a variety of location, intensity, and density of use issues on this site. Table 1 following this narrative history presents the history in tabular form.

Excluding the certification process for the City's LCP, the history of the Coastal Commission's involvement with development on this site goes back to at least 1988, when the City submitted an LCP amendment request (LCP 1-88). This LCP amendment, which changed the LUP designation on a portion of the Williams property from Agriculture to Commercial and Visitor-Serving Commercial, was the result of an initiative (Measure B) passed by the voters of Morro Bay on November 4, 1986. The amendment, which was approved by the Commission on June 7, 1988, redesignated "thirty (30) net acres generally located adjacent to Highway 1 and Morro Bay Boulevard, with approximately fifteen (15) net acres to be available for 'district commercial' uses and approximately fifteen (15) net acres to be available for 'visitor-serving' uses". The Commission found that the conversion of the 30 net acre portion of the property from agriculture to non-agricultural uses "can be justified under Sections 30241.5 and 30242." The findings also state:

The Commission finds that strict adherence to the standards of the LUP and the Coastal Act after conversion [of ag land] to urban uses will assure that no significant adverse effects are created and that any adverse impacts on the remaining adjacent agricultural lands will be mitigated.

Subsequently, the City submitted LCP amendment request 2-88, which changed the zoning on the 30 net acres from Agriculture to Central Business District Commercial and Visitor-Serving Commercial, to be consistent with the new LUP designation. On September 13, 1988, the Commission approved amendment 2-88.

On March 26, 1990, the City of Morro Bay approved Conditional Use Permit 03-88/Coastal Development Permit 05-88R for a 237,000 square foot commercial retail development with 977 parking spaces, including 605,000 cubic yards of grading, filling approximately 1,200 linear feet of Willow Camp Creek, and the extension of Morro Bay Boulevard. That action was appealed to the Commission by the Voters Initiative Committee, and on April 8, 1991, the Commission found that substantial issue existed regarding the grounds of appeal. On July 17, 1991, the Commission approved



a project consisting of a 126,235 square foot commercial retail shopping center, 235,000 cubic yards of grading, a stream enhancement program, 728 parking spaces, a frontage road extension, three bridges, crib walls to 28 feet high, and on-site drainage and utilities.

On November 11, 1990, the City of Morro Bay approved a vesting tentative parcel map, Coastal Development Permit 37-90R/Parcel Map 04-90, for a subdivision of the 177.23 acre parcel into four parcels (three parcels totaling 38.3 acres for commercial and visitor-serving commercial development and a remainder parcel of 138.93 acres). That City action was appealed to the Coastal Commission by the Voters Initiative Committee, Roy Harley et al., and Commissioners Gwyn and Franco. On April 8, 1991, the Commission determined that a substantial issue existed. On July 17, 1991, the Commission denied the subdivision request and found that 1) the City's approval would not restrict the use of the portion of the property not proposed for the shopping center to agricultural uses, as required by LUP Policy 6.05 and Zoning Ordinance Section 17.39.135 and, 2) LUP Policies 3.03 and 3.04 prohibited new water and sewer services to previously unsubdivided areas until a water management plan was incorporated into the LCP.

In 1991, the City submitted amendment request LCP 2-91 (Measure H). This amendment, which originated with another citizens' initiative, limited the shopping center area to 13 gross acres. The City's submittal included a proposed shopping center area of 13 gross acres, in accordance with Measure H, with an additional 9.5 acres of visitor-serving commercial uses. LCP Amendment 2-91 was approved by the Coastal Commission on November 13, 1991.

Subsequent to that Commission approval, the City was sued by the Voters Initiative Committee, which claimed that Measure H did not allow any visitor-serving uses. The San Luis Obispo Superior Court agreed with the petitioner and ordered the City to inform the Coastal Commission that visitor-serving uses were impermissible on the site. The City then submitted LCP amendment request 1-93 to delete the 9.5 acres of visitor-serving area. That amendment was approved by the Commission on June 9, 1993.

On June 14, 1993, the City of Morro Bay approved Coastal Development Permit 43-92, a tentative map, for subdivision of the site into two parcels; a 17.54 acre parcel (the commercial development area plus creek open space and buffer areas), and a 157.45 acre remainder parcel, consistent with Measure H (see Exhibit 4). However, the approval did not permanently restrict the use of the portion of the property not proposed for the shopping center to agricultural uses, nor did it prohibit future subdivisions, as required by the LCP. Nonetheless, that action was not appealed to the Coastal Commission.

Thus, by mid-1993, there existed one City Conditional Use Permit and one Coastal Commission Coastal Development Permit for the proposed commercial development and one City Coastal Development Permit for the subdivision of the property, outlined in the table below.



TABLE 1

	City Permits (CUP and CDP)	Coastal Commission Permit (CDP)
Commercial Development	CUP 03-88 (CDP 05-88R was appealed to the Commission)	A-3-MRB-89-134 (result of appeal of CDP 05-88R to the Commission)
Tentative Parcel Map	CDP 43-92	None

Each of these permits have been extended over the years. During that time, the applicant has investigated the possibility of some development on the site other than that approved, but located in the same area and consistent with the commercial zoning. In 1998 the property owner requested from the City an extension of the map (CDP 43-92), which had previously been automatically extended according to amendments to the Subdivision Map Act. As part of the discussions with City staff, the owner agreed to request withdrawal of the conditional use permit (CUP 03-88) for commercial development.

On August 16, 1999, the City Planning Commission approved the time extension for the map and accepted the withdrawal of CUP 03-88. That action was appealed to the City Council, and on September 27, 1999, the City Council denied the appeal and upheld the decision of the Planning Commission. On October 26, 1999, the City's action was appealed to the Coastal Commission.

B. Measure H

On November 6, 1990, the electorate of Morro Bay passed Measure H. That initiative proposed to reduce the total acreage allowed for commercial development on the subject site from 30 net acres to 13 gross acres and to allow only commercial uses, and not visitor-serving uses. Although not explicitly stated, it was implied that the remaining acres not included within the 13 gross acres (but within the original 30 net acres) would be rezoned back to Agriculture; however, the text of the initiative did not discuss the designation of property outside of the district-commercial zone.

Measure H has essentially three parts (see Exhibit 5). The first part directs the City to amend its land use regulations to designate a portion of the Williams' property for "District Commercial" use, including a new shopping center. The second part sets the size of the development ("13 gross acres") and its location ("generally located adjacent to Highway 1 and Morro Bay Boulevard"). The third part says that "[t]he citing (sic) of such use shall be in accordance with a precise development plan. . . ." referring to the second step of the City's two-step development permit process (approval of a Concept Plan followed by the Precise Plan, which constitutes final approval).

Measure H was originally submitted to the Commission in June 1991, as LCP Amendment 2-91, and was approved with suggested modifications at the Commission's November 1991 meeting. Subsequently, before the certification review of the City's acceptance of the Commission's action, the City was sued by the Voters Initiative Committee (the Measure H proponents). The suit was brought to force the City to remove all language in the City's submittal that allowed for visitor-serving uses.



In an order dated May 18, 1992, the court found for the Voters Initiative Committee and ordered the City to rescind its decision designating nine and one half acres of the site as visitor-serving. A second court order dated November 9, 1992, clarified the earlier order by requiring the City to inform the Commission in writing that visitor-serving uses were impermissible as a provision of LCP Amendment 2-91, to rescind the ordinance and resolution that were adopted by the City and submitted to the Commission as part of the Measure H amendment request allowing visitor-serving uses on the subject parcel, and to immediately submit to the Commission a revision of LCP Amendment 2-91 that would remove all provisions allowing for visitor-serving uses.

Complying with the court orders, the City rescinded its previous ordinance and resolution and submitted a new amendment, LCP Amendment 1-93. This amendment was approved, as submitted, by the Commission on June 9, 1993. LCP Amendment 1-93 revised both the LUP and the zoning maps by reducing the commercially zoned area to 13 acres and designated the remainder of the 30 net acres (from LCP Amendment 1-88) as Open Area. Table 2 below summarizes the various measures, LCP amendments, and coastal development permit actions that have occurred over the years with respect to the project site.

TABLE 2

Item	CCC Action and Date	Effect
LCP 1-88 (Measure B)	Approved 06/07/88 (Revised Findings 10/13/88)	Changed LUP designation of agriculture to commercial and visitor serving commercial. Redesignated “thirty (30) net acres, generally located adjacent to Highway 1 and Morro Bay Boulevard, with approximately fifteen (15) net acres to be available for ‘district commercial’ uses and approximately fifteen (15) net acres to be available for ‘visitor-serving’ uses.”
LCP 2-88	Approved 09/13/88	Changed zoning on the 30 net acres from Agriculture to Central Business District Commercial and Visitor-Serving Commercial.
A-4-MRB-89-134	Project approved 07/17/91 (Revised Findings 08/09/91)	Approved 126,235 sq.ft. commercial retail shopping center, 235,000 cu. yds. of grading, stream enhancement, 728 parking spaces, frontage road extension, three bridges, crib walls to 28 feet high, on-site drainage and utilities.



A-4-MRB-90-49	Tentative map denied 07/17/91 (Revised Findings 01/14/92)	Disallowed proposed subdivision of 177.23 acre parcel into a 38.3 acre parcel and a remainder parcel of 138.93 acres. Commission found that 1) the City's approval would not restrict the use of the portion of the property not proposed for the shopping center to agricultural uses, 2) LUP Policies 3.03 and 3.04 prohibited new water and sewer services to previously unsubdivided areas until a water management plan was incorporated into the LCP.
Item	CCC Action and Date	Effect
LCP 2-91 (Measure H)	Approved 11/13/91 (Revised Findings 04/08/92)	Reduced allowable shopping center area to 13 gross acres and limited visitor-serving area to 9.5 acres.
LCP 1-93 (Measure H, as interpreted by Superior Court)	Approved 06/09/93 (Revised Findings 07/20/93)	Eliminated the 9.5 acre visitor-serving designation and placed that area into the Open Area designation.
Morro Bay CDP 43-92, Tentative Map, approved by City on 06/14/93	None	Tentative map for subdivision of site consistent with Measure H.

C. Appellant's Contentions (Part I)

The appellant contends that the City's extension of the coastal development permit for the tentative map is inconsistent with LUP Policy 6.09 (Measure H), which states that "the citing (sic) of [a district commercial] use shall be in accordance with a precise development plan consistent with the General Plan Land Use Element and relevant Coastal Act and especially Chapter 3 policies."

As discussed above, the City extended the tentative parcel map for subdivision of the property and concurrently accepted a withdrawal of the time extension request for the use permit associated with the commercial shopping center (based upon the assumption that the withdrawal of the request to extend the use permit was appropriate to mitigate any concerns regarding the extension of the Parcel Map). The appellant claims that that City's decision to approve the extension of the Parcel Map "in the absence of a required Precise Plan" is inconsistent with the LCP.

The term "Precise Plan" pertains to a portion of the comprehensive planning process defined by the LCP, and is required for all development subject to the Planned Development (PD) Overlay Zone. The 13 gross acres zoned for District Commercial uses are subject to the requirements of such a PD Overlay Zone, the purpose of which is "to provide for detailed and substantial analysis of



development on parcels which, because of location, size, or public ownership, warrant special review.”

Zoning Ordinance Section 17.40.030G (Planned Development – Precise Plans Required) states in relevant part:

Upon approval by the City Council of a concept plan,...a precise plan of development shall be submitted to the Planning Commission showing the details of the property improvement and uses or activities to be conducted on the site, and any subdivision proposals. Precise plans shall be processed in accordance with procedures for a Conditional Use Permit as contained in Chapter 17.60.

1. *Plans shall be prepared containing all the general information required of concept plans, which has been further developed to a precise level of detail.... A precise plan shall contain the following minimum information:*

g. Tentative tract or parcel map, where lands involved in the proposal are to be divided or joined together.

Whether or not the appellant’s claim concerning consistency with Measure H (LCP Policy 6.09) raises a substantial issue requires interpretation of LCP procedural standards that are less than precise. Zoning ordinance 17.40.030G above clearly requires that a tentative map be included as a part of a Precise Plan submittal. However, the converse is not clearly stated in the ordinance. That is, does the LCP require that a Precise Plan be included as a part of a Tentative Parcel Map submittal? Appellant argues that the correct interpretation of Measure H is that the “siting” of a commercial use on the site means not only the locating and design of a specific commercial project, but also the subdivision of the property prior to such specific project approval. The logic of such an approach is that the subdivision establishes basic parameters such as the development envelope, that implicate such coastal resource issues as visual impacts and riparian setbacks. Thus, the appellants argue that the drawing of appropriate lot lines must necessarily go hand-in-hand with the evaluation of specific project details that would be addressed in a precise plan.

Although the LCP does not clearly answer this question, there is merit to the Appellant’s argument. Nonetheless, there is also merit to the argument that the appropriate design of a subdivision does not necessarily require a precise development project. Indeed, many subdivisions occur well in advance of any specific development planning. In addition, in this case, the subdivision map essentially reflects the land use designations and zoning of the certified LCP. Thus, the subdivision does not establish development potential beyond that already incorporated into the LCP. It is true that the subdivision does not technically address the LCP requirement to protect agricultural land but this is not an issue raised by this procedural argument of the appellant (see below). In addition, any specific concerns about changed environmental circumstances (e.g. visual and traffic) can be addressed in the coastal development permit review of a specific project. **Therefore, on balance, no substantial issue is raised by this contention of the appeal.**



D. Appellant's Contention (Part 2)

The appellant's second contention of appeal is similar in nature to the first. He points out that the conditions of approval for the parcel map and the precise plan for the shopping center allow extensions of the parcel map upon finding that the project complies with all applicable provisions of the City's Municipal Code. However, the condition of approval referred to in the appellant's contentions is that of a coastal development permit approved in 1993, for both the tentative parcel map and the commercial development. Because the City's most recent approval did not include the extension of the precise plan, this condition of approval was removed from the coastal development permit extension subject to this appeal. In addition, the standard of review in this case is not the conditions of approval for the coastal development permit, rather, it is the certified LCP. However, this contention of the appeal raises question to the project's conformance with the Morro Bay Municipal Code (of which the LCP is a part), making it reasonable to further analyze this point made by the appellant.

Zoning Ordinance Section 17.58.130 (Time Extensions) states in relevant part:

A. A Coastal Development Permit shall expire on the latest expiration date applicable to any other permit or approval required for the project, including any extension granted for other permits or approvals...¹

B. The term for CDP [Coastal Development Permits] permits and variances may be extended by the Director for up to two (2) one year periods.... The Director shall review the proposal for consistency with all applicable ordinances and policies effective at the time of the request for extension.²

Section 17.58.130(B) is meant to embody the Coastal Act requirement that extensions of permits be evaluated "to determine whether there are changed circumstances that may affect the consistency of the development with the policies of Chapter 3 of the Coastal Act or with a certified local coastal program".

As discussed above, the existing zoning of the property, established by Measure H, will remain in place on the project site whether or not the vesting Parcel Map is recorded. Therefore, the subject Parcel Map simply creates a single parcel, consistent with the boundaries of the site previously zoned for commercial development. Zoning Ordinance Section 17.58.130B requires the governing body to

¹ Thus, the Coastal Development Permit expiration date is extended in conjunction with any extension of the tentative map's expiration date.

² The project was originally approved for a two year period; however, for a period of approximately 12.5 months after approval, the amount of time remaining to implement the permits was "tolled" administratively, with the concurrence of the City until the City's Water Management Plan (WMP) was accepted by the Coastal Commission (since project conditions specified that the map could not be recorded until the WMP was approved). This administrative extension effectively changed the original approval date from June 14, 1993 to July 5, 1994; however, during this time period, the State legislature enacted several statutes extending the life of maps and related projects tentatively approved by local agencies. On September 9, 1993 State law provided an automatic two-year time extension for projects viable as of that date. On May 15, 1996, the State approved an additional one-year automatic time for projects viable as of that date. These extensions changed the expiration date for the project to July 5, 1999. The City's deadline for acting on the time extension request was September 3, 1999 (the Planning Commission acted on August 16, 1999).



determine whether there are changed circumstances that would affect the consistency of the development with the certified LCP.

Because the development in question is the extension of the Parcel Map, and not the commercial shopping center, the analysis of whether or not changed circumstances exist must be limited to those issues raised by the proposed extension of the Map. Issues related to the future development of this parcel, such as its potential to impact visual and environmental resources, and circulation patterns, or the larger question regarding the need for such a development, should be addressed at the time of such a proposal. Again, while there are significant changed circumstances with respect to potential future development on this site, these changes do not raise a substantial issue with respect to consistency of the Parcel Map with the LCP because of the existing zoning in the LCP. However, because of past concerns regarding water supply in the City, a brief discussion of the current water situation is provided below.

Water Supply

At the time of the appeal of this project to the Coastal Commission, the City was experiencing water supply shortages due to a drought and restrictions on pumping from the Chorro Valley so as to maintain a minimum stream flow for habitat purposes. At that time the City built a desalination plant and pursued delivery of water from the State Water Project. Subsequently, the City also submitted a water management plan for certification into the LCP. That plan guides the City's use of its water supplies and describes the City's priorities for water supply as, in descending order, conservation, State Water, groundwater, and desalination.

Overall, the water supply situation in Morro Bay is much better that it was in the late 1980s and early 1990s, when the permits for the shopping center development and subdivision were approved. This is due primarily to the arrival of State Water in late 1997. In 1997, State Water accounted for 20 percent of the City's water supply. For 1998, the percentage supplied by State Water rose to 97 percent and for 1999, State Water accounted for 98 percent of the City's water supply. This has resulted in a dramatic reduction in pumping from the City's groundwater wells. The total production from the Chorro Valley wells dropped from 985 acre feet in 1997 (64 % of total) to 38 acre feet in 1998 (3 % of total) to 34 acre feet (2 % of total) in 1999. Production from the City's other wells, in the Morro Valley, dropped from 249 acre feet in 1997 (16 % of total) to zero in both 1998 and 1999.

Although the water supply situation has changed in Morro Bay since approvals were granted for the shopping center development and the subdivision, the change has been a positive one rather than a negative one. Therefore, there is no reason to revisit the approvals based on water supply.

E. Agriculture

Although not explicitly stated in the contentions of appeal, the appellant raises concern regarding protection of the property from future development. As part of LCP amendment request 1-88, the agricultural potential of the land was analyzed. The Commission found that the conversion of the 30



net acre portion of the property from agriculture to non-agricultural uses “can be justified under Coastal Act Sections 30241.5 and 30242.” The findings also state:

The Commission finds that strict adherence to the standards of the LUP and the Coastal Act after conversion [of ag land] to urban uses will assure that no significant adverse effects are created and that any adverse impacts on the remaining adjacent agricultural lands will be mitigated.

LUP Policy 6.05(3) and Zoning Ordinance Section 17.24.020B.5(F) both state:

Land divisions or development proposals shall include a means of permanently securing the remaining acreage in agricultural use, such as agricultural preserves, open space easements, or granting of development rights. Covenants not to further divide shall also be executed and recorded prior to issuance of development permits.

As a condition of approval, the City required the applicant to record open space easements with the Parcel Map, pursuant to LCP Policy 6.05(3). The location of the open space easements, which account for approximately 46.2 acres of the 175 acre parcel, protect the creek corridor, steep slopes (30% slopes or greater), and the hilltops (areas within 50 feet vertical elevation of ridgetops). Exhibit 8 of this report identifies those areas of the parcels subject to the easement.

Although the City’s approval adequately protects open space on the property, the City’s action fails to protect agricultural lands in a manner that is consistent with the LCP. In addition, the City’s action originally approving CDP 43-92, the tentative map for the subdivision of the property into two parcels, and the recent extension of that permit failed to require measures to prevent the future subdivision of the agriculturally zoned land. However, City of Morro Bay Ordinance No. 266 (attached as Exhibit 9) mandates that any change of zoning from its current Agricultural designation must be approved by a majority vote of the people. Although not the equivalent of an agricultural easement, this requirement provides protection against a future re-zoning of the property. However, it does not address the LCP Policy’s requirement to prevent future land divisions. Thus, subsequent to the appeal of this project to the Commission, the City agreed to incorporate an additional condition of approval for the extension of the Parcel Map, which addresses concerns regarding future land divisions on the remainder agriculture parcel. This condition (referenced in correspondence attached as Exhibit 10) requires the applicant to enter into an agreement with the City to ensure “that the agriculturally zoned portion of the Remainder Parcel [shall] not be further subdivided.” The condition also states that any future modification to the covenant would be an amendment to the City’s coastal development permit, and would be appealable to the Coastal Commission. Therefore, the second requirement of LCP Policy 6.05(3), regarding future land divisions, has been fulfilled. **Thus, no substantial issue exists with this contention of the appeal.**

F. Extension of Coastal Commission Coastal Development Permit A-4-89-134



The applicant has filed a request to extend Coastal Commission permit A-4-MRB-89-134. However, the applicant plans to withdraw that extension after the Commission acts on this appeal. The applicant's intent is to then go back to the City at some future date and make application for a new coastal development permit for a different project, but in the same location and with the same zoning. Regardless of this intent, though, it should also be noted again that there are significant changed circumstances in this case, and thus it would likely be inappropriate to further extend the commercial development permit that currently exists for the site, regardless of the disposition of the subdivision extension.

VI. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures that would substantially lessen any significant adverse effect that the project may have on the environment.

The Commission's review of this appeal has not identified any environmental impacts that have not been appropriately resolved by the project and the City's conditions of approval. Thus, the project is not expected to have any significant adverse impact on the environment within the meaning of the California Environmental Quality Act.

